

Scotland vol 9.

AN
ADDRESS
TO THE
LANDED GENTLEMEN
OF
SCOTLAND.

[PRICE ONE SHILLING AND SIXPENCE.]

1783

W. B. R. S.

TO THE

LANDED GENTLEMEN

SCOTLAND.



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AN
ADDRESS
TO THE
LANDED GENTLEMEN
OF
SCOTLAND,
UPON THE SUBJECT OF
NOMINAL AND FICTITIOUS
QUALIFICATIONS
USED IN THE ELECTIONS OF
MEMBERS OF PARLIAMENT
FOR THE
SHIRES OF SCOTLAND.
WITH
OBSERVATIONS UPON TWO SKETCHES OF BILLS
PRESENTED TO THE STANDING COMMITTEE UPON FREE-
HOLD QUALIFICATIONS AT EDINBURGH.

L O N D O N :

REPRINTED BY MILLAN AND RAE, HENRIETTA STREET,
COVENT GARDEN,
FOR T. CADELL, IN THE STRAND; AND C. ELLIOT,
EDINBURGH.

MDCCLXXXIII.

ADDRESSES
TO THE
LANDED GENTLEMEN

SCOTLAND
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NOMINAL AND FICTITIOUS
QUALIFICATIONS

USED IN THE ELECTION OF
MEMBERS OF PARLIAMENT
OF THE
SHIRERS OF SCOTLAND.



WITH
OBSERVATIONS UPON TWO DRAFTS OF BILLS
PRESENTED TO THE STANDING COMMITTEE UPON THEM
BORN QUALIFICATIONS AT EDINBURGH.

LONDON:

PRINTED BY J. MILLAR AND SONS, NEW-STREET,
1797-ST. GARDEN,
FOR J. GARRICK, IN THE STRAND; AND C. BELL,
STATIONER,
NORTH-SIDE OF THE WATER.

tion, of your most interesting care and watchful
solicitude. An illustrious French author has
said, that the Englishman is the only one in
the world whose political or civil liberty is the
direct end of his constitution. Hence, the
individual is protected from the
infringements and oppression of the government. Hence
the reserved power in the body of the people
to choose persons to sit in the great council of
the nation, whom they deem worthy of con-
fidence in that most important of all trusts,
the framing and passing of laws to bind the
people.

GENTLEMEN,

THE purpose of this Address is to call
your attention to a matter in which no
less than your political existence is concerned.
The British Constitution stands an universally
admired fabric of political wisdom, consisting
of three principal parts, so justly tempered
and poised, so happily formed upon the basis of
public freedom and public security, that, to
preserve this noble structure in its matured
strength and beauty, ought ever to stand before
your eyes as an object worthy of your first atten-
tion,

tion, of your never-remitting care and watchful solicitude. An illustrious French author* has said, that the English nation is the only one in the world where political or civil liberty is the direct end of its constitution. Hence sprung those equitable and just rules of law by which the meanest individual is protected from the insults and oppression of the greatest. Hence the reserved power in the body of the people to chuse persons to sit in the great council of the nation, whom they deem worthy of confidence in that most important of all trusts, the framing and passing of laws to bind the people.

The Constitutions of the two British kingdoms were founded on the same principles of freedom. The joint will of the Legislature of both kingdoms easily united nations whose political principles, whose constitution of government, and whose interest, as well of individuals as of the public, were so similar and essentially conformable to each other. Let us not then, lose sight of the advantages which our much to be revered Ancestors have handed down to us: as we have from them derived our birth,

* Montesquieu, *l'Esp. des Loix*, liv. 11. c. 5.

birth, let us preserve uncontaminated their spirit of freedom; a spirit which is the very life of our Constitution, and the great bulwark of our political liberty and personal security. We must not suffer ourselves to be hurried into faction and licentiousness on the one hand, nor permit ourselves to fall into a pusillanimous indifference and a criminal submission on the other. Let us calmly consider, but resolutely adhere to, the genuine principles of our Constitution, and those rights upon which depend our personal security, our personal liberty, the enjoyment of our property, and the legal privileges annexed to it by our Constitution.

“ The Commons consist of all such men of
 “ any property in the kingdom as have not a
 “ seat in the House of Lords, every one of
 “ whom has a voice in Parliament, either per-
 “ sonally or by his representatives. In a free
 “ State, every man, who is supposed a free
 “ agent, ought to be in some measure his own
 “ governor; and therefore a branch at least of
 “ the legislative power should reside in the whole
 “ body of the people.” *

This

* Blackstone's Commentaries on the Laws of England.

This right of the people to assemble together to consult and deliberate upon matters of public concern, forms an essentially component part of the British Constitution. In so extensive and populous a country as England, it was impracticable for the great body of the people to act in their aggregate or collective capacity. Such popular deliberations must have become disorderly and tumultuous : therefore it was wisely contrived, that the people should act by representatives chosen by the inhabitants of separate districts, defined and ascertained by the general voice of the people. Counties were represented by reputable persons chosen by the proprietors of land ; such being deemed the body of the people most interested in the welfare of the State. Cities and boroughs were represented by citizens and burgeses, who were supposed to know the trading interest of the nation. The representatives of the people were called, as appears from the tenor of the writ of summons, to advise his Majesty “ *de communi consilio* “ *super negotiis quibusdam arduis et urgentibus regem, statum, et defensionem regni concernentibus.*”

In

In Scotland the same mode of representation took place; and we are furnished by our acts of parliament with the most complete knowledge of those persons who were called by the King to assemble in parliament for national purposes. These were all the subjects of the kingdom holding any property of the Crown, however small that property was. Proprietors of land deriving right from subjects, were not intitled to sit in parliament. The King called none but such as he knew, by means of their deriving right to their lands immediately from the Crown.

It will be proper to remark, that in ancient times the vassals of subjects were not considered as independent proprietors of land. The subject-superior, by the grant to his vassal, was not truly divested of the lands contained in it. The superior's right was held to be the highest and most eminent right; and his vassal was liable to so many services, casualties, and forfeitures, that his situation was worse, and more precarious, than that of tenants by lease in our days.

Besides

Besides the services of hosting, hunting, watching, and warding, and other personal services, which were frequently exceedingly grievous, there were certain fixed annual duties payable by the vassal to the superior. But these were not all the burdens attending vassalage; there were certain rights attendant upon the *dominium directum*, or superiority, which, as they depended upon certain events, were called *casualties*. These were the casualties of ward, recognition, marriage, non-entry, relief, life-rent-escheat, disclamation, and purpresture. By the casualty of ward, the superior was intitled to the full rent of the ward-lands during the heir's minority. Recognition inferred a total forfeiture of the ward-lands, arising to the superior from the vassal's alienation of more than a half of the lands to a stranger, without the superior's consent. By the casualty of marriage, the superior was intitled to demand from his former vassal's heir, upon his marriage, a certain sum, as the value of his wife's tocher or dower, which was estimated at what the heir might from his circumstances reasonably expect: and where the heir refused to marry the woman offered by the superior, the

avail

avail of the marriage, as it was called, was doubled in favour of the superior; and in estimating the avails, not only the ward-lands, but all the free estate, heritable and moveable, of the vassal's heir, was included; regard being had to what his estate was at the time he became marriageable. Non-entry was a casualty due to the superior out of the rents of the feudal subject, through the heir's neglecting to renew the investiture after his ancestor's death; this casualty was in all cases considerable, but in a certain situation amounted to a right of intermission with the whole rents of the lands. Relief was a casualty which the superior was intitled to demand from the heir, as a consideration for receiving him as his vassal. Liferent-efcheat was a forfeiture incurred by a vassal who had been declared rebel, and continued unrelaxed for year and day; his superior, as being without a vassal, was intitled to the rents of the lands during all the days of the rebel's natural life. Disclamation was that casualty, by which a vassal forfeited his whole fee, if he disowned or disclaimed the superior as to any part of it. Purpresture was incurred by the vassal's encroaching upon any part of his supe-

rior's property, or by any means attempting, as by building or inclosing, &c. to make it his own. This attempt was punished with a forfeiture of the whole fee.

From such a multiplicity of penalties and forfeitures to which the vassals of subjects were anciently liable, it may easily be conceived, that such vassalage was a wretched state of vile dependence and slavery ; and hence persons in such a miserably subordinate condition could by no means be deemed worthy of holding a place in the great council of the nation. The superior was not only the ostensible person, but his right in his vassal's lands was still considered to be solid and substantial ; and was, it is manifest, truly affected by any measures which went to constitute any public burden upon the lands in the vassal's grant.

But in modern times, matters are totally changed. The subjects of this country had arrived by degrees at a just sense of the unhappy effects of the condition of vassals with respect to their superiors ; the nation saw the deformity of that slavish system ; their minds had been
long

long prepared to abolish the odious distinction between superior and vassal. At length, by the British statute, 20 Geo. II. c. 50. the tenure of all lands in Scotland by ward-holding, and the casualties of ward, marriage, and recognition, are utterly abolished. The tenure of the lands held ward of the Crown, is turned into blanch-holding, for the payment of one penny Scots yearly, *si petatur tantum*, "if demanded only;" and the tenure of those lands that were held of subjects-superior, is converted into feu-holding, for payment of a determinate yearly rent in place of the casualties and services. The Court of Session is authorised to fix what yearly-rent, or feu-duty, may be a just recompence to the superiors for the change of holdings from ward to feu; and the Court has laid down certain rules for ascertaining that recompence; rules extremely favourable to the vassal, or real owner of the lands. So that now the superior's right is in all cases, except where a high feu-duty is payable, little more than nominal; and the real, solid, and substantial right of property is in the vassal alone. His condition too, with respect to his manner of holding his property of a subject-superior, is become more eligible than his

holding of the Crown; the expence attending his making up titles, and vesting himself in the property, being easier in the first than in the last of those two modes of investiture.

It is evident, beyond contradiction, that the possession of landed property independent of a subject, was the circumstance which, by the Constitution of Scotland, determined who should be called by the King, or was constitutionally intitled, to sit in Parliament and deliberate upon national affairs.

One of the earliest acts passed in the reign of King James I. of Scotland “ ordained and statute, that all prelates, erles, baronnes, and freeholders of the King within the realme, sen they ar halden to give presence in the Kingis Parliament and general Councel, fra thine foorth be halden to compeir in proper person, and not be a procuratour; but gif the procuratour alleage there and prove a a lauchfull cause of their absence,” 1425, c. 52.

The strict attendance of all the free tenants of the Crown, required by the above statute, without

without the liberty of appearing by a procurator, was found to be too great a burden upon freeholders possessing small estates. It was found expedient, therefore, to exempt them from personal attendance by an act of King James I.

“ The King, with consent of the haill counsell
 “ generallie, hes statute and ordained, that the
 “ small barronnes and free tennentes need not
 “ to cum to parliaments, nor general counceles;
 “ swa that of ilk shirreffdome there be send,
 “ chossen at the head-court of the shirriffdome,
 “ twa or mae wise men---the whilks shall be
 “ called *commiffars of the shire*,---to hear, treat, and
 “ finally to determine, all causes to be
 “ proponed in counsell or parliament. The
 “ whilks commiffars shall have costage to them
 “ of ilk shire that awe compeirance in parliament
 “ or counsell,” &c.

By an act of James II. no freeholder, holding lands of the King under twenty pounds, should be constrained to give personal presence in Parliament, unless he be a baron, or specially called by writ. 1457, c. 75.

By an act of James IV. barons, freeholders, and vassals, whose lands were within the extent
 of

of 100 merks, were exempted from personal attendance in Parliament, unless specially called by the King's writ, provided they sent their procurators to answer for them. 1503, c. 78.

An act of James VI. 1587, c. 114. ratifies the above act 101 of James I. relieving the smaller barons and freeholders from giving their presence in Parliament.

By another act of King James VI. the qualification to vote for commissioners for shires, is ordained to be a forty-shilling land in free tenantry, with actual residence within the shire; and the freeholders are directed to chuse "two wise men, being the King's freeholders, resident indwellers of the shire, of gude rent, and weil esteemed, as commissioners of the same shire," &c. 1587, c. 114.

By an act of Charles H. the qualification of freeholders intituled to elect and to be elected, is either a forty-shilling land, or ten chalders of victual, or 100l. of real rent, feu-duties deducted; and all heritors, life-renters, and wadsetters, holding lands of the King of the above yearly

yearly rent, are intitled to elect and to be elected commissioners to serve in Parliament, noblemen and their vassals excepted. 1661, c. 35.

By another act of Charles II. in place of the real rent, the rent according to the general valuation which had been made of all the lands in the kingdom was assumed as the legal qualification; and every freeholder in possession of a forty-shilling land of old extent, or of lands liable to his Majesty's supplies for 400l. of valued rent, holding of the King, was intitled to elect or to be elected a commissioner to serve in Parliament.

This statute was the standing rule at the time of the Union, and is so in a great measure at this day.

To correct an abuse which had crept in, of one person claiming more than one vote in Parliament, as sustaining different characters, it was enacted, " That na person shall take upon
 " him the function, office, or place of all the
 " three estates, or of twa of them; but shall
 " only occupy the place of that selfe estate
 " quherein

“ quherein he commonly profeffis himfelf, and
 “ quhairof he takis his ftile.” 1587, c. 33. By
 this act of Parliament, more votes than one
 in the perfon of an individual, were declared
 to be an abufe, and were therefore prohibited
 as illegal and unconstitutional.

Anciently, perfonal attendance in Parliament
 was confidered by the generality of freeholders
 as a burden, which, upon moft occafions, they
 were defirous to avoid: in latter times, mat-
 ters have in that refpect taken quite a different
 turn. Attendance in Parliament is deemed a
 profitable occupation; and the utmoft exertions
 of induftry, follicitation, and intereft, to fay
 no worfe, are employed to obtain a feat in the
 great council of the nation. The motives which
 infligate men to fo eager a purfuit after a feat
 in Parliament, are not unknown to the Britifh
 people. Thefe motives muft be either of a ge-
 nerous or of a mercenary nature. They muft
 arife from a difpofition to preferve the Confti-
 tution in its purity; to propofe and forward
 meafures calculated for the national good; and
 to prevent the violation of the natural and
 civil rights of the fubjects of the kingdom,
 the

the preservation of which is the just end of all government: or, they must be ascribed to a predetermined purpose of promoting those measures only, which seem to promise the advantages of self-interest: the interest of the community being entirely left to the guidance of a person called the *Minister*; whose views, whether just or unjust to particular classes of men, advantageous or disadvantageous to the community at large, consistent or inconsistent with the principles of the Constitution, calculated to preserve or tending to subvert personal security and general freedom, will, by the latter sort of representatives, be supported or thwarted, in proportion to that share of the public spoil they can obtain, or think themselves intitled to possess. So that a Minister, in this corrupt state of things, is like the master of a ship, who, in order to command the assistance of the sailors and mariners in working and steering it to a safe harbour, is obliged to suffer them to rifle and plunder the cargo, while the owners have nothing for their portion but loss and disappointment.

If to sit and vote in Parliament be a gainful trade; then, to command more votes than one becomes an object of material importance and weighty consideration: if the principles of the Constitution, and the enactments of an uncorrupt Legislature, are found to be adverse to a multiplication of votes in the person of any individual, howsoever great his property, then devices must be found out, and schemes put in practice, for favouring the designs and gratifying the rapacity of men, who, not satisfied with the free use and rational enjoyment of large and ample possessions, nor even with the exercise of their lawful powers over enormous estates and exuberant fortunes, direct their views towards establishing in themselves, and securing to their posterity in the line of family representation, the sole and exclusive privilege of national representation, and of enacting laws to bind the people.

The Constitution of the Scottish kingdom, any more than that of her sister-kingdom of England, gave no countenance to multiplication of votes in the person of any individual; nor was it agreeable to the view of the Legislature

to suffer the establishment of any scheme or plan, whose operation was in effect a multiplication of votes in the person of an individual, in the election of a Member to serve in Parliament, or sitting in Parliament in the capacity of a representer of the people.

Attempts had been made by owners of large estates, to engross a larger share of the representation of the people than the known rules of the Constitution admitted, by making conveyances of estates in trust to confidants, or by granting rights to estates, redeemable for elusory sums, on purpose to create and multiply votes, contrary to the true intent and meaning of the laws made in that behalf. To obviate the evil introduced by these means, it was enacted by a statute of 12th of Queen Anne, c. 6. That from and after the determination of the then Parliament, it should be lawful to any of the electors present at a meeting for election, who suspected any person to hold their estates in trust and for the behoof of another, to require the preses of the meeting to put to such persons the following oath: " I *A. B.* do, in the presence of God, declare and swear, that

“ *the lands and estate*, for which I claim to give
 “ my vote in this election, are not conveyed to
 “ me in trust, or for the behoof of any other
 “ person whatever. And I do swear before
 “ God, that neither I, nor any person to
 “ my knowledge, in my name, or by my al-
 “ lowance, hath given, or intends to give, any
 “ promise, obligation, bond, back-bond, or
 “ other security, for redispensing or reconvey-
 “ ing the *said lands and estate* any manner of
 “ way whatsoever.

From the anxious terms in which this oath
 was conceived, it must be evident, that the
 Legislature held these trust-conveyances, and
 rights redeemable for elusory sums, to be a
 perversion of one of the fundamental princi-
 ples of the Constitution; these were therefore
 estimated to be evils of such magnitude, as re-
 quired to be guarded against by the sanction of
 a solemn oath, and to be counteracted by the
 hope of salvation in a future state of exis-
 tence.*

But as it was found still to be in the power of
 proprietors of large estates to make alienations
 of

of their property, and for nominal purchasers to grant bond for a certain price, the interest of which corresponded to the rents of the lands conveyed, which were made redeemable upon payment of a certain elusory sum of money, the Legislature framed a new oath, which was judged sufficiently comprehensive to prevent the evils so anxiously guarded against by the statute of Queen Anne; and by an act of the 7th of Geo. II. cap. 16. this new oath was substituted in place of the former oath, and runs in the following words: “ I *A. B.* do in the
 “ presence of God declare and swear, That
 “ the lands and estate of *me* ~~me~~ *me*
 “ for which I claim a right to vote in the elec-
 “ tion of a member to serve in parliament for
 “ this county or stewarty, *is actually in my*
 “ *possession, and do really and truly belong to me,*
 “ *and is my own proper estate, and is not convey-*
 “ *ed to me in trust, or for or in behalf of any*
 “ *other person whatsoever;* and that neither
 “ I, nor any person to my knowledge, in my
 “ name, or on my account, or by my allow-
 “ ance, hath given, or intends to give, any
 “ promise, obligation, bond, back-bond, or
 “ other security whatsoever, other than ap-
 “ pears

“ pears from the tenor and contents of the
 “ title, upon which I now claim a right to
 “ vote, directly or indirectly, for redispensing
 “ or reconveying the said *lands and estate* in any
 “ manner of way whatsoever, or for making
 “ the *rents or profits* thereof forthcoming to
 “ the use or benefit of the person from whom
 “ I have acquired the said estate, or any other
 “ person whatsoever; and that *my title to the*
 “ *said lands and estate is not nominal or fictitious,*
 “ *created or reserved* in me in order to enable
 “ me to vote for a Member to serve in Parlia-
 “ ment; but that the same is a *true and real*
 “ *estate* in me, for my own use and benefit, and
 “ for the use of no other person whatsoever :
 “ And that this is truth, as I shall answer to
 “ God.”

It will be kept in view, that the lands and
 estate, which are the subject of the oath, are
 such as, at a certain ancient period, returned
 yearly to the proprietor forty shillings; a period
 when the Scottish coin had not suffered the debase-
 ment of after-times; or were liable for his Ma-
 jesty's supplies, corresponding to the valuation
 of 400l. Scots. The claimant is bound to swear,
 that

that those lands and estate are in his possession, and do really and truly belong to him; and that the estate is his own proper estate, and was not conveyed to him in trust, or for behoof of any other person. Can there possibly be conceived any words more plain, more simple, and more intelligible, than these, or more directly pointing out that the claimant must have a real and substantial interest in the lands for which he claims a vote.

All lovers of freedom, and assertors of constitutional rights, had reason to expect, indeed to rest in full confidence, that the terms in which this last oath was conceived, would effectually put a stop to all views of an unconstitutional multiplication of votes, and sufficiently prevent the abuses which it was the purpose of the Legislature to correct. But, alas! the ingenuity of one set of men, and the depravity of others, concurred to frustrate the object of these acts of parliament, and the oaths introduced by them: and it is no less wonderful than true, that, of late years, votes have been multiplied to that degree, that the Members of Parliament sent from the Counties of Scotland are no longer
the

the representatives of the people, who are real owners of landed property, but are the delegates or commissioners of the nobility and such gentlemen commoners as happen to have retained or acquired that sort of interest in lands which is called the right of superiority; a right which has been, by wise policy and a just sense of constitutional freedom, divested of its tyranny; and being reduced to an unsubstantial interest, is now happily sunk into little more than a vain and empty name. Yet upon this unsubstantial right, upon this vain and empty title of superiority, a fabric is raised, which has already advanced far to crush, and must in some future period, and that not very distant, if not speedily prevented, totally overwhelm the constitutional rights of the people of this part of the united kingdom, and utterly deprive them of the power of chusing their representatives in the great council of the nation.

The mode invented to accomplish the execrable purpose of perverting the constitution, and defeating the plainest and most express enactments of the Legislature, is not a little curious:

rious : and here an account of it will not perhaps be unacceptable.

When a person, a peer for instance, who is possessed of a large estate holding of the Crown, intends to create votes upon his estate, he separates the property from the superiority, by granting to *A*, in whom he can confide, a feu-right of certain lands valued in the cefs books at 400l. Scots ; then he executes in favour of *B* a liferent disposition of the same lands, directly conveying the property to be held of the Crown, *with the exception of the feu-right* antecedently granted to *A*, who then reconveys the feu-right to the disponent ; so that he becomes reinstated in every substantial interest in the lands which he formerly had ; and *B* has nothing more than a liferent of a bare superiority, yielding nothing but the trouble of voting at an election for a member of Parliament. By this strange sort of management, votes are multiplied in proportion to the extent of a person's valuation in a county. The same mode is followed by a person, whether peer or commoner, who has only in himself the bare right of superiority. He disposes to a trusty person

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a life.

a liferent-right to the lands in his charter from the Crown, with the exception of former alienations of the property. In both cases, the disponent apparently gives away the property of the lands, completely and irredeemably, during the life of the disponent or receiver of the right : but with the same breath that he constitutes the right, he undoes it ; for he specifies the exception of the feu-right granted to a certain person : so that nothing remains that can be called the property of this spectre of a freeholder, but the parchment, by means of which this hocus-pocus trick, this disgraceful juggle, is executed. Can there be a greater insult offered to the understandings of men ?

It is therefore matter of wonder and astonishment, how any person of common understanding, upon such an empty, unsubstantial, fruitless conveyance, can raise up his hand to heaven, and call God to witness that the lands and estate for which he claims a right to vote, are actually in his possession, and do really and truly belong to him ; and that the estate in his grant is his own proper estate, and is not conveyed in behalf of any other person whatsoever ; yet
many

many good, honest, and conscientious men have taken the oath of *trust and possession*, as it is called ; reconciling the oath to their consciences by distinctions invented by lawyers, whose profession often leads them to pervert plain principles, to puzzle the understanding, and confound the judgment, in matters of disquisition and controversy. Lawyers argued, that the right of superiority was the only estate the law acknowledged to constitute a qualification ; that unless the right of superiority appeared to be in the claimant, the property of the lands and estate could bestow no title to be admitted upon the roll of freeholders ; consequently the oath could respect the superiority only. This mode of reasoning is clearly fallacious. It was the object of the two acts of parliament, introducing the oaths above recited, to prevent fictitious qualifications, such as might be constituted by conveyances of lands in trust, or redeemable for elusory sums of money, or in any other nominal or fictitious mode, by which persons of no real property or substantial interest within a county could assume a privilege of classing themselves with real and substantial freeholders, who had from the earliest times the radical

right of attending Parliament in person, and afterwards of sending persons of eminent reputation and respect in the county to represent them in Parliament,

It is sufficient that the acts introducing these oaths were passed for the purpose of preventing any infringement upon the principles of the Constitution; consequently, of preventing any person from having a voice in the election of a Member of Parliament, or of being elected, excepting such as had a substantial freehold qualification within the district, and among the people to be represented.

The supreme civil Court never showed a disposition to give the effect of real qualifications to these nominal ones; but, in point of legal interpretation, the Court found itself tied down to sustain them as legal qualifications to such claimants or voters as had taken the oath appointed by law. But the sense of the Court is manifest. They found, that a disposition of lands, containing an assignation to a Crown-charter, but reserving the property to the granter of the disposition, did not confer a title
of

of enrolment.* Yet, if the bare right of superiority was sufficient to constitute a freehold qualification in terms of law, why put people to the necessity of that circuitous mode of conveyances and reconveyances observed in the present method of constituting these nominal qualifications?

It will be remarked, upon reading the last oath, that the Legislature seemed to be aware of the mode of interpretation now adopted by those nominal freeholders who have taken the oath of trust and possession: for, not satisfied with obliging the claimant to swear that the estate for which he claimed a vote was in his possession, and did truly belong to him, he is further obliged to swear, that his title to the said lands and estate is not *nominal or fictitious, created or reserved* in him, in order to vote for a Member to serve in Parliament. How is the conscience of the claimant to be reconciled to this part of the oath, by an argument, that the right of superiority only was regarded? This right being in the claimant, agreeable to his title-deeds, it is in his power, he may say, to swear

* 1759, Elliot contra Shaw and Oliver.

swear that his title is not nominal or fictitious. But a difficulty still remains to be got over: Is this title neither created nor reserved for the purpose of voting at an election for a Member of Parliament? Two solutions have been given of this difficulty: first, That the title is not a nominal and fictitious one created or reserved, but is a true and real title created or reserved, &c. and secondly, That if any other interpretation is given to these words, no mere superior could vote, although he should have purchased a right of superiority to himself and his heirs for ever: that this interpretation would be contrary to the law and ancient usage of Scotland, the Constitution never having acknowledged the right of any person to sit in Parliament, who did not hold directly of the Crown.

It will be difficult to state any proposition, however plain and simple, directed to the reason and opinions of men, which is absolutely beyond the reach of cavil and dispute. It is, however, matter of deep concern, and a dangerous experiment for a man to suffer himself to tamper with his conscience, or to permit himself to be carried away by strained, equivocal, nay, indeed
Tophistical

sophistical interpretations of an oath, whose terms are level with the understanding of every man endued with any moderate share of common sense; an oath, obviously consisting of plain facts, the truth of which cannot remain a matter of doubt with the person required to take it. An oath ought to be taken in its plain and most unambiguous sense; no unnatural, no forced, no ingenious construction ought to be admitted: and there is no doubt that this oath has been taken by many good men merely through the influence of example, and as an oath permitted by law, and effectual in a certain predicament, without considering its real import, or being able to state the proposed solutions of the difficulties attending it.

But if different-qualifications of a bare superiority must be viewed as a nominal and fictitious freehold, in what light must be viewed a wadset of such a superiority? Yet such qualifications are common, and have been sustained as legal, upon the claimant's taking the oath of trust and possession.

Anciently

Anciently proper wadsetters * were real proprietors under defeasible or redeemable rights ; and if the wadsetter held his lands immediately of the Crown, he was the King's free-tenant, and was intitled to vote in choosing a Commissioner for Parliament. The consideration of property being now thrown aside, and that of superiority being assumed as the only criterion of the right of the electors or of the elected, the wadset of a naked superiority is held as a sufficient qualification. If possible, this right is still more nominal and fictitious than a life-rent-qualification ; the one may subsist during the holder's life, the other may be defeated at pleasure.

It is certain, that every man who accepts of any such qualification, esteems himself as holding it for behoof of the granter. It almost always happens, that when, from any unforeseen circumstance, the holder of such qualification finds any obstacle in his way which will prevent his voting according to the inclination of the granter, he feels it to be his duty to renounce

* A wadset in Scotland, is similar to mortgage, or lands held in gage or pledge in England.

renounce his qualification, so as that it may return to the granter, and thus put it in his power to find some other person more subservient to his purposes. It is impossible, therefore, for such person to swear truly, that the conveyance was not made in behalf of another person than the receiver. That secret condition indeed does not appear from the face of the title-deeds; but it subsists in the mind both of the granter and receiver:

The bad tendency of these nominal qualifications, both as they affect the constitutional rights of the subjects of this kingdom, and as the oaths incident to them affect the morals of the people, is universally acknowledged; and therefore proposals have been made by well-disposed persons, to rectify these evils, and put matters upon a constitutional footing. Their good intentions, however, have not been carried into execution; from what causes, it is not our province at present to inquire. It is your business, Gentlemen, to rectify the abuses, which have grown to such an enormous height of late years, as to threaten the total subversion of the representation of the people in this part of the

United Kingdom. It is impossible to entertain a doubt, that if you unite heartily in the laudable purpose of re-establishing in yourselves the rights and privileges radically vested in you by the Constitution, and transmitted to you unimpaired by your ancestors, you will without difficulty obtain the accomplishment of an object so essentially necessary to the personal liberty, the security of property, and the general freedom and welfare of the subjects of this kingdom.

It is proposed, therefore, that the qualification which shall be held sufficient to intitle a person to vote at an election for, or to be elected, a Member to serve in Parliament, shall depend upon his *being proprietor* of a forty-shilling land of old extent; or of lands, liable for his Majesty's supplies, to the amount of 200l. Scots; that valuation bearing a juster proportion to the old standard qualification of a forty-shilling land of old extent, than the valuation of 400l. Scots, first introduced by the act 1681: and that the oath appointed by the act of the 7th of Geo. II. c. 19. shall still remain competent to be put in terms of that act; with this variation or addition,

dition, That after the words, "and do really and truly belong to me," the words *in property* shall be inserted; which will move every possibility of voting upon a mere right of superiority. And it is proposed, that at your meetings of Commissioners of Supply, you take the sense of the landed interest, report the general opinion of this matter to your Representatives in Parliament, and instruct them to use their endeavours, and concur with the other representatives of counties from Scotland, who favour a rectification of the present abuses, to bring a bill into Parliament for preventing those abuses and corruptions for the future. And to this great and important object, your attention is particularly called, for many striking reasons and momentous considerations.

You know, Gentlemen, that according to the present system of splitting and conveying rights of superiority in the manner above explained, the Peers of Scotland, who are expressly prohibited by act of parliament to interfere with the elections of Commoners, have acquired a power and influence in the election of the representatives of the people, altogether

ther unexampled in the history of this country; a power, which is directly subversive of the constitution of this kingdom.

By the present mode of management, Peers are, or may be, in effect, the electors of the representatives of the freeholders in all the counties of Scotland: for, although they do not appear personally at elections of Commoners to sit in Parliament, their presence is but too manifest by a long train of confidants, friends, and dependents, who, in virtue of qualifications which do not bestow upon them one inch of property within the county, or communicate to them any subject to interest them in its welfare, and who consequently are none of the people intitled to be represented for that county, yet out-number and out-vote the real proprietors, inhabitants of the county, and chuse as their representative a man, who indeed is the dependent of the noble Peer, or junto of Peers, but whom, it is odds, the real owners of landed property and constitutional voters had never seen, and perhaps scarcely ever heard of before; but it is sufficient, if he is subservient to the will of the noble *superior* of extensive property
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in the county, in which a foot of land does not, perhaps, truly belong to him.

The abuse here pointed out also strikes against Commoners of extensive superiorities, who have gone into this unconstitutional system of splitting superiorities. By the Constitution they have right to but one vote, let their property be ever so over-grown or extensive: therefore they have no right to appear at an election of Members of Parliament, with a train of dependents and followers voting upon nominal qualifications, which is inconsistent with every idea of a free representation, and therefore is a corruption which requires a speedy and an effectual remedy. There are, it is true, many Peers and Commoners in Scotland who have not as yet adopted this fatal system; but if a speedy stop is not put to the evil, there can be no doubt but the contagion in a short time will become universal.

It may happen, indeed, that gentlemen of respectable character and reputation will not be disposed to accept of nominal qualifications; and particularly, that it will become the general opinion, that the oath of trust and possession
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cannot be taken in such circumstances with a safe conscience : but this supposition would never put a stop to the evil, but would have the certain tendency of increasing it. Those superiors who at present bestow such nominal qualifications upon their friends, and feel no compunction at their swallowing the oath of trust and possession, could never hesitate to bestow them upon their dependents, of whatever character and condition ; who, being men of meaner rank and more submissive consciences, would not scruple in all cases to comply with the views of the granters : and thus we might soon expect to see the meetings of elections for Members of Parliament filled with the footmen, postilions, cooks, pimps, and parasites, of these mighty superiors, to the utter expulsion of every man of real worth and dignified character in the kingdom.

Persons of such a stamp being the electors of a Member to serve in Parliament, their constituent would not fail to confer on them every mark of distinction in his power : he would not therefore neglect to have their names inserted in the acts of supply and the commissions of the peace ; and thus constitute these worthy personages

sonages the guardians of the peace and regulators of the internal police of the county. Can any man, whose breast is animated with the smallest spark of public spirit, or who is endowed with the least portion of regard for the welfare of his country, revolve in his mind for a moment the consequences of such a detestable system of representation of this part of the United Kingdom, without feeling the utmost indignation at the authors of it, and execrating the abettors of a scheme of policy pregnant with such evils to the Constitution of their country ?

If a Minister finds it adviseable, or necessary for carrying on his measures, to secure the voice of a septennial Member of Parliament, by bestowing marks of royal favour ; how much more must he find it his interest to attach to his measures persons who have contrived means to secure to themselves and their heirs a perpetual or hereditary power and privilege of electing or sending to Parliament the constituent members of it, who ought to be the representatives of the people, but who in fact can be viewed in no other light than as the venal tools of a particular

lar class or description of men in the kingdom? Thus, it is obvious, every species of venality and corruption must spread through the land with rapid progress. The contagion will not be confined to the higher classes; it will extend its baneful influence over all ranks and degrees of men.

All orders of men will be taught to look up with servility and debasement of mind to the persons possessed of these super-eminent indefeasible rights and privileges, for favour and protection. Thenceforward the security of property is unhinged, and our most valuable rights must be held upon a precarious tenure. The judges of our property are named by the Crown: The royal favour is conferred only on persons who lend their support to ministerial measures. Hence the contagion of venality must pervade the seats of justice. It will be kept alive by gainful prospects; and every occasion of solicitation in favour of a son or brother, or other relation or friend, will prove a fresh incitement to preserve the venal system in strength and vigour. It will not escape notice, that the determination of our property in the last resort

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is lodged by the Constitution, and properly while it remains possessed of its natural health and vigour, in that part of the legislative body which consists of the Nobles of the kingdom.

Our Constitution is happily formed on the principles of freedom, wisdom, and duration. The interest of the great body of the people is the chief end of all good government. Their liberty, protection, and security, must not depend upon the partial views or interested prospects of any particular class or rank of men: they must rest upon a more solid basis, that of wise laws, of which the object is the indiscriminate good of the whole subjects of the kingdom; laws which must be executed with fidelity and probity.

A system of government, which puts it easily in the power of any order of the State to corrupt a few of the subjects of the kingdom, and by that means to rule the rest, must be fatal to liberty, and subversive of a free government.

Yet such is the system that has of late years been established in this part of the United

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Kingdom.

Kingdom. The tendency of perpetual entails, by which estates may be increased, but cannot be diminished, with the assumed power of splitting or dividing superiorities, and creating nominal votes, in the manner above taken notice of, must at first fight strike every man endowed with the least ray of reason, as a most dangerous innovation and perversion of our free Constitution; and which, if not checked by the landed proprietors and real freeholders of the kingdom, will become a rooted establishment, to the utter destruction of the freedom of the people.

The British system of government is formed on the happiness, not the oppression, of the people. Accordingly they find themselves happy under its influence; they love their Constitution, and wish to support it; they are not desirous to change their laws nor their masters: but if they suffer a venal and corrupt system of government to be once established, they will find it difficult to break their chains, and emancipate themselves from the tyrannical fetters imposed upon them. The influence of venality and corruption will silence the servile

part of the people ; while the lovers of virtue and constitutional freedom must sink into submission, overawed by power which it may be then too late to resist.

1731

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME



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OBSERVATIONS

UPON THE

TWO PROPOSED BILLS

ORDERED TO BE TRANSMITTED BY THE

GENERAL MEETING OF COUNTY DELEGATES
AT EDINBURGH,

FOR THE PURPOSE OF OBTAINING THE OPINIONS OF THE
HERITORS IN ALL THE COUNTIES OF SCOTLAND,

UPON THE AMENDMENT OF THE LAWS RELATIVE TO THE

REPRESENTATION OF SCOTLAND IN PARLIAMENT,

AS PROPOSED BY THESE BILLS.

OFFICE OF THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

DEPARTMENT OF THE ARMY

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OBSERVATIONS, &c.

IT is universally known, that anciently all barons and freeholders sat in the Scotch Parliament. By an act of James I. of Scotland, the attendance of small barons and freeholders was dispensed with ; but it was necessary that they should appear in Parliament by Commissioners or Representatives, "twa or mae wise men after the largenes of the scheriffdome." These Commissioners, or Commissars as they were called, had costage from each shire in proportion to the rents of the electors within the shire. By an act of James II. no freeholder was bound to come to Parliament "bot he be of twenty pounds woorth of land," as expressed in the title of the act. By an act of James IV. freeholders within an hundred merks of extent were not compelled to come to Parliament; but were allowed to appear by their procurators.

curators. By act 114th of the eleventh Parliament of King James VI. the qualifications of Commissioners were of new ascertained; it was required they should be "the Kingis freeholders, " resident indwellers of the schire, of gude " rent, and weil esteemed." The qualification of the voters for Commissioners were also by that act ascertained to be a forty-shilling land in free tenandry; "and nane to have voite in " their election, bot sik as hes fourty-shilling " land in free tennendry, halden of the King, " and hes their actual dwelling and residence " within the same schire." By act 35th of the first Parliament of Charles II. it was enacted, " That beside all heritors who hold a forty- " shillings land of the King's Majesty *in capite*, " that also all heritors, liferenters, and wad- " setters, holding of the King, and others " who held their lands formerly of the bishops " or abbots, and now hold of the King, and " whose yearly rent doth amount to ten chalders " of victual, or one thousand pounds, all feu- " duties being deducted, shall be and are ca- " pable to vote in the election of Commissioners " of Parliaments, and to be elected Commis- " sioners to Parliaments." It was enacted, " That " the

“ the whole *freeholders, heritors, and liferenters,*
 “ holding of the King and Prince, shall, ac-
 “ cording to the proportion of their *lands and*
 “ *rents lying within the shire,* be liable and
 “ obliged in the payment” of the allowance
 given by that act to every Commissioner for his
 ordinary expences in providing foot-mantles for
 the riding of the Parliament.

It is evident by this act, that every voter for
 a Commissioner to Parliament was understood to
 be a person of a real estate within the shire,
 either in fee, liferent, or wadset. By the act
 21st of the third Parliament of Charles II. a
 new standard of qualification was introduced,
 viz. a forty-shilling land of old extent, or 400l.
 Scots of valued rent; and it was declared, that
 none should have a right to vote at elections of
 Commissioners, but those who at the time should
 be “ publicly infest in *property or superiority,*
and in possession of a forty-shilling land of old
 extent, &c.”

It cannot be presumed, that it was the inten-
 tion of the Legislature to vest the power of voting
 for Commissioners to Parliament, in persons

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who

who had a less substantial interest in the respective counties than was fixed and determined by the former statutes. Indeed it can admit of no doubt, that the qualification of Commissioners was still considered to depend upon a real and substantial interest in lands. Two things were required by the act, *public infestment and possession*; the last of these requisites can only apply to the receipt of the profits of the estate. The whole tenor of the act ascertains, in the clearest manner, that persons of a certain yearly rent within a county, only were intitled to vote for Commissioners from that county. It may be observed, that it was declared, that apprisers and adjudgers should have no right to vote during the legal reversion; that is, within the time given by law for redemption of those apprisings or adjudications, by the heritor against whose estate they were laid: but after the expiration of this term it was declared, that the adjudger first infest only should have vote; and no other appriser or adjudger, "till their shares be divided, and the extent and valuation thereof may appear." It is impossible that this enactment of the statute can apply to any thing but real property. Further: by the
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last clause of the act the charges of the Commissioners are to be paid by the *heritors, life-renters, and wadsetters*, and the expences of the foot-mantles to be defrayed in the same manner by the electors. These are circumstances which determine beyond the possibility of cavil, that the Legislature had never conceived the idea of an elector without a substantial interest in land.

Upon the words *or superiority* in this act, is founded that swarm of noxious and unconstitutional qualifications which have infested this country for some years back; the word *superiority* occurring in the act, seemingly contradistinguished from property by the disjunctive particle *or*, has given rise to the evil which is now so justly and loudly complained of.

Every man of landed property, however small, ought to turn his attention to an object of so much importance as a proper and effectual rectification of the abuses now so prevalent in the Northern part of this island. It becomes every man who is the friend of the Constitution of his country, to consider, with due attention, the

draughts or heads of Bills now transmitted to the counties; and to give the sanction of their approbation to that which appears to be most calculated for removing the evil so much felt in this part of the United Kingdom.

For a considerable time after the act last-mentioned, which passed in the year 1681, the creation of mere superiority-qualifications for voters of electors of Members of Parliament, was not thought of. Subaltern rights of lands were granted by men of great property to vassals; but no such thing was invented as a nominal qualification, by a separation of property from superiority, with a view to the establishment of an extraordinary influence in Parliament.

It may well be conceived, that after the Union of the two Crowns, and when the politics of Scotland were more intimately allied to England, a seat in the British Parliament came to be considered as of more importance than a seat was formerly in the Parliament of Scotland. The Members were fewer in number after the Union. The interest of a Scots Peer, or wealthy Commoner, came to be valued in proportion
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to his weight and influence in the choice of the forty-five Representatives of Scotland. It is not to be wondered at, therefore, that the multiplication of votes began, soon after the Union, to figure as a matter worthy the attention of men of rank and property. The first method found out was simple: a disposition of lands of sufficient extent or valuation was granted, upon the eve of an election, to the intended voter, who gave to the granter a declaration of trust. Infeftment was taken, but not registrated. When the election was over, the deeds were immediately destroyed. To remedy this abuse, the act of the 12th of Queen Anne was passed, the preamble of which sets forth: “Whereas
 “of late several conveyances of estates have
 “been made in trust, or redeemable for elu-
 “sory sums, noways adequate to the *true value*
 “*of the land*, on purpose to create and multiply
 “votes in elections of Members to serve in
 “Parliament.” To prevent this method of unduly multiplying votes, it was ordained, that no conveyance on which infeftment was not taken, or seisin registrate, a year before the test of the writs, should be held a good qualification; and the act prescribes an oath specially
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directed against the abuses of trust-rights and obligations to redispone.

The enactments of this statute made it necessary for vote-makers to alter their method. It was clearly hazardous to dispoſe eſtates of any value in fee, without any obligation upon the grantee to rediſpoſe. Hence aroſe the modes that are now practiſed, of veſting ſuperiorities and wadſets, and liſerents of ſuperiority, in conſidants, after being ſplit and ſeparated from the property, for the purpoſe of multiplying votes at elections of Members of Parliament. The multiplication of conſtitutional votes at elections could be no evil; but the multiplication of nominal voters, bound down to the intereſt of any individual, was a monſtrous abuſe; for in proportion as theſe increaſed, the legal voters in effect diminished. To remedy theſe abuſes, the oath now in force was deviſed in the year 1733: and although that oath is framed in words ſufficiently clear to men of common underſtandings, yet the intent and meaning of the Legislature have been eluded by the ingenuity of lawyers, who have endeavoured, by ſtrained explanations of the oath,

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to reconcile it to the consciences of men pre-disposed to favour the interest of their friends or patrons. For some time after that oath was devised, few persons could be found who thought themselves in safety to take the oath, upon a liferent or wadset right of superiority. Qualifications were, therefore, for a considerable time made by dispositions of superiority in fee: but by degrees the passions of men despoiled the oath of its terrors; wadset and liferent votes were created in all parts of the kingdom, and there were found multitudes, clergy as well as laity, who took the oath without hesitation. The evil now has grown to such a height, that it can no longer be borne by men endowed with the least portion of a free spirit.

In one of the Bills submitted to the consideration of the Counties, it is proposed to remove the evil by a prohibition of votes depending on wadset and liferent rights of superiority; and also on votes of fees of superiority, where the superiority appears to have been separated from the property for the purpose of making votes: but it is meant that a naked superiority in fee, not lately separated from the property, shall be
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a good title of enrolment; and that the legal qualifications shall still be 400l. Scots of valued rent, or a forty-shilling land of old extent.

Is it not with good reason to be apprehended, that many questions at law will arise from this clause of the Bill, and that nominal votes will still be made by fees of superiority; as happened after the act 1733, when wadsets and liferents were in disrepute? We see a constant struggle betwixt the endeavours of the Legislature to restrain nominal votes, and the ingenuity of vote-makers to evade the laws. The last has always prevailed hitherto, and will most certainly still prevail, while the right of voting is allowed to depend on superiority. This Bill still allows to remain in existence that unsubstantial right, that impure fountain, whence all the evils and abuses complained of have directly flowed. Why should a person, who has no substantial interest in lands, be permitted to vote; and the person who has the only real and substantial interest in these lands, be absolutely excluded? Is it not of importance, that the voters in Scotland should be proprietors of lands in Scotland? But if naked superiorities shall
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be held good qualifications for electors of Members of Parliament, then a great body of voters may consist of men who have no connection whatever with this country, and who, therefore, are not called upon by any natural or necessary tie to attend to our interest. The Members of Parliament chosen to represent the people of Scotland, may also be unconnected with the country ; and consequently will pay no attention to acts of parliament that may essentially affect the produce, the manufactures, the commerce, of this part of the United Kingdom. The preservation of the Articles of the Union relative to our church, or the public burdens on our lands, will figure in their eyes as matters of little importance. It therefore behoves the Landed Interest of Scotland to consider well, and deliberate maturely, before they give their sanction to a parliamentary application, which goes no farther than cutting down wadsets and liferents of superiority, and allow qualifications of naked superiorities in fee still to remain. This would be giving sanction to the radical evil, the stem from which the other evils proposed to be remedied are but shooting branches. What sort of fruit this poisonous trunk may in future

times produce, the observer will not pretend to determine; but he may say, without any pretensions to an uncommon share of sagacity or penetration, that it can never be salutary to the community at large.

It is proposed by the other Bill, that property alone shall determine the qualifications of Members of Parliament, and of their electors; and that the standard of qualification shall be reduced from 400l. to 200l. Scots, or a forty-shilling land of old extent. The valuation of a forty-shilling land bears no just proportion to that of 400l. Scots. The valuation of the first seldom rises higher than 150l. or 160l. Scots. This matter is simple, and admits of no subtilties, niceties, or evasions: for although an oath is appointed to be taken, yet it is put in the power of the freeholders to enter into an explication of any claimant's or voter's right, and to prove the defect of title. It appears to be of some importance for the proprietors of land to hold immediately of the Crown. The inconveniences often attending the making up titles to estates, which hold of different subject-superiors, would
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by that means be removed : the land-rights of Scotland would then be more easily and readily found on the most respectable and authentic records.

The British Constitution cannot be preserved, if its principles are forgotten, or suffered to be departed from. Landed proprietors are so particularly connected with the soil, and depend so much upon its produce, that they must ever be most materially interested in the welfare and prosperity of their country. By a statute of Geo. II. it is enacted, “ That no person shall vote “ at the election of any Knight or Knights of “ a Shire, within that part of Great Britain, “ called England, or Principality of Wales, “ without having a freehold estate in the “ county for which he votes, of the clear “ yearly value of forty shillings, over and “ above all rents and charges payable out of, “ or in respect of the same.” The Parliament of Scotland anciently established the qualification of electors of Commissioners to serve in Parliament to be a forty shilling land of old extent ; and this is undoubtedly the constitutional qualification. In England, Copyholders are ex-

cluded from voting for Knights of the Shire, as they hold their lands at the will of the Lord of the Manor, or by copy of his Court Roll. There were anciently in England several classes of Copyholders, but those who held by copy of Court Roll, without any mention of the will of the Lord, constituted the highest and most privileged order ;—they are held in law to have a freehold interest in their copyholds, their rents and services being fixed and ascertained by custom, and not dependent on the will of the Lord. Hence it became a question, whether this class of Copyholders were not Freeholders within the meaning of the laws in being prior to the above-mentioned act of Geo. II. They are called Tenants by copy of Court-Roll ; because they have no other writings or evidence concerning their lands and tenements, but only the copies of the Rolls of the Courts of the Manors within which they lie. Copyholders can neither sue nor be sued for their lands in the King's Courts of Common-Law, but only in the Court-Baron of the Lord.* That class of men, who were known in Scotland by the appellation of *Rentallers*, or *Kindly Tenants*, were originally in a situation very similar

* Blackstone's Considerations on Copyholders.

lar to Copyholders in England. Landed proprietors had frequently, in ancient times, set lands to favourite tenants in *rental*; which was a particular species of tack or lease granted by the landlord, for an easy tack-duty, to the lineal successors of the ancient possessors of the land, or to persons whom the proprietor meant to favour as such. The lessees who were inrolled by the proprietor in his list of rentallers in his rental-book, were called *Rentallers* or *Kindly Tenants*. On the renewal of the rental to the heir, he paid to the landlord, in name of entry-duty, a *graffum* or fine, the amount of which was regulated by the custom of the Barony. By adhering to the strict notions of the feudal-law, a rental, even when granted to a tenant and his heirs, was by the Courts of Law restricted to the lives of the rentaller and his first heir; because, had rentals been permitted to extend to all succeeding heirs, they would have become proper heritable rights, which by the feudal rules could not have been constituted but by *seisin*. In this manner, that class of men called *Kindly Tenants*, have been extinguished in Scotland. The Courts of Law having, by their decisions, defeated the liberality
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and beneficence of good men, by giving way to the aristocratical principles of feudal policy, and gratifying the avarice of landlords, who possessed not the kindly feelings of their justly munificent ancestors. In England, where the comfortable subsistence of the people has been more regarded than in Scotland, customs and usages favourable to the people, were preserved and supported by the Courts of Law, and their determinations were assented to by the humane feelings of the higher orders of men. Copyholders came to have established in them a permanent interest in lands by force of custom, which would have also secured rentals in Scotland, according to their genuine nature and original institution, had not the Supreme Civil Court been too much addicted to feudal opinions, and too deeply tainted with aristocratical principles, to favour the interest of the people.

Proprietors of land in Scotland, who hold of subject-superiors, have at present no votes in elections of Members of Parliament; yet they are independent proprietors of land; their rights are constituted by dispositions, charters, and infeftments, which appear upon authentic records;

cords ; they can alienate their lands freely without controul ; the consent of the person called Superior is not asked. The casualties due to the subject-superior, where they are not taxed or restricted to a certain sum, consist of double the feu-duty upon the entry of an heir, and of one year's rent upon the entry of a singular successor or purchaser. Upon tender of the casualties, the superior can be compelled by law to give a feudal entry : should a subject-superior refuse to give an entry, an heir or purchaser can be under no embarrassment as to the establishment of a feudal investiture, as they can go to the Sovereign, who refuses no vassal. Heritors, or landed proprietors in Scotland are, in every just sense, freeholders. The payment of certain fixed casualties is no mark or badge of base tenure. All the lands in the kingdom hold of the Crown ; and the Crown's casualties, are equally exigible from proprietors deriving right immediately from the Crown, as the subject-superior's casualties are exigible from proprietors deriving right to their lands immediately from subjects. Subinfeudations were prohibited in England by a statute of Edward I. by which purchasers of lands of the fees of
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Lords were ordained to hold their lands of the chief Lord of the same fee, and not of the Feoffor; because the chief Lords of the fee, or Superiors as they are stiled with us, often lost their escheats, marriages, and wardships of lands, belonging to their fees. The proprietors of lands so held are called Freeholders, and are intitled as such to vote in elections for Knights of the Shire. All heritors or proprietors of land in Scotland are, in every just sense, freeholders, both in point of *interest* and *tenure*. No base or sordid services are performed, no servile duties are exigible;—property is vested by dispositions, charters, and infeftments; and whether held directly of the Crown or of a subject, the tenure is equally free and independent, and is equally well secured, whether it holds mediately or immediately of the Crown.

All heritors or landed proprietors in Scotland, of a valuation equal to a forty-shilling land of old extent, are, according to the principles of the Constitution, and in all reason, intitled to chuse the Representatives of the People in Parliament: they are most essentially interested
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in the parliamentary conduct of these representatives. The landed proprietors of Scotland, possessed of that quantity of free and independent interest in lands, which was, by the wisdom of our ancestors, fixed and ascertained as the proper qualification of electors of Commissioners to serve in Parliament, are, by the most certain and undeniable principles of the Constitution, intitled to insist, that the Representatives of the Shires or Counties of Scotland shall be elected to Parliament by their free choice.

The elevation of men of no property to the condition of electors of Members of Parliament, is, in this part of the United Kingdom, attended with peculiar evils. The Parchment-men, or Paper-barons, as they are vulgarly and contemptuously called, being, by an abusive act of power, ranked in the class of freeholders, are as such intitled by law to be appointed by Parliament in their yearly acts of supply, Commissioners to levy the Land-tax, and apportion it upon the landed proprietors of the counties: they are, as Commissioners of Supply, vested by law with the powers of regulating highways,

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bridges,

bridges, and ferries, and of determining questions relative to them; and also of assessing, to a certain extent, the landed proprietors in the shire, with the sums necessary for making roads, building or repairing bridges, opening and preserving passages at public ferries, and regulating the statute-work to be performed upon the public roads. It is easy to conceive in what manner all these very important matters will be conducted by Commissioners of Supply, *ullius addicti jurare in verba magistri*. It requires no superior degree of foresight, to predict what roads, bridges, and ferries, will be most attended to, and where the assessments of the counties will be disposed of. Those Freeholders also find their way into the Commissions of the Peace, and are vested with a very extensive and important jurisdiction over the subjects of the kingdom. The danger of vesting mean and dependent men with eminent powers of public police, with jurisdiction, civil and criminal, of high moment, is too obvious to need illustration or discussion.

Let the qualifications of the Voters of the Representatives of the People depend upon property,

perty, as established by the genuine principles of the Constitution. The present highly prized estate of a naked superiority, will then fall into its natural insignificancy ; a price will be brought only by a substantial proprietary interest. It will be happy for this country when that vision of superiority shall no more trouble the fancies of men, shall depart from the land, and leave no track behind it.

F I N I S.

E R R A T U M.

Page 50, line 19, For "laid," read "led."

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